

Executive Note

The Bankruptcy Fees (Scotland) Amendment Regulations 2007 SSI/2007/220

The above instrument will if approved be made in exercise of the powers conferred by sections 69A, 72 and 73(1) of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

This instrument amends The Bankruptcy Fees (Scotland) Regulations 1993⁽¹⁾, which came into force on 1 April 1993.

The Register of Insolvencies

The Register of Insolvencies is a public register maintained by the Accountant in Bankruptcy (AiB). The Register records the insolvency of individuals and companies in Scotland. For personal insolvency the information provided includes the individuals name, address, occupation together with the court at which the bankruptcy was awarded and the details of the appointed trustee. The register records details of protected trust deeds, holding information on the individuals name, address, the date signed, the date recorded in the register, and the trustee. For both insolvency and trust deeds the register records the trustee’s discharge and the distribution of the estate. Company insolvencies recorded give information on company name and registered number together with the type of proceedings, the office holders and their date of appointment.

At present the current procedure to search the register consists of a manual search by AiB staff and the completion of the relevant documentation. This process is labour intensive and the charge of £16.00 per search has not been amended since 1999.

As part of the modernisation of the AiB computer systems, from 2 April 2007, the AiB will provide a facility for searches of the Register of Insolvencies on-line via the AiB website. This will bring the Register of Insolvencies into line with the Debt Arrangement Scheme (DAS) Register which is also a public register maintained by the Accountant in Bankruptcy in her role as DAS Administrator which is available on-line.

Purpose of the reforms in the above instrument

The purpose of the amendment regulations is to provide a fee structure for direct access to the on-line register to be charged at a daily rate of £16.00 where searches are carried out for a period or part period between 00.00 and 23.59 hours. This facility will allow the participant to carry out as many searches during this period as they wish. The annual fee for the same unlimited access to the register will be £4,000.00.

The Regulations also provide for organisations to be exempt from charging when performing searches on-line. Regulation 2 defines the meaning of “non profit making body” to clarify those organisations to which no charge will be levied for a search of the register. These will

⁽¹⁾ S.I. 1993/486, as amended by S.I. 1999/752.

include the Scottish Executive, other Government Departments, police and credit unions. Organisations may be asked to provide proof to the satisfaction of AiB of their non profit making status. This allows non profit making organisations, like these, to check the register at no cost. It will inform them of their clients, or prospective clients, status prior to making them bankrupt or providing further lending. Provisions have also been made for Agents of the AiB to be able to search the register on-line free of charge.

As not all who require to search the register will have access to the internet the Regulations continue to provide a process for charging when manual searches are carried out by AiB staff at the current rate of £16.00 per search.

In line with an upgrade to our Finance systems and in order to co-ordinate with the SE policy on consignment of funds, a change has been made to the charge for this service. If a dividend paid to a creditor is not encashed the sum is forwarded to the AiB to be held until claimed by the creditor. At present these sums are lodged in an account with a charge of £10.00 and a list of creditors is maintained separately. The new system requires each consignment of funds to be broken down and lodged under each creditor. This will allow the system of recording and paying out to a single creditor to be more efficient and cost effective. To facilitate this change a new charge of £10.00 for each creditor named within a consignment will be levied.

It is anticipated that the majority of searches of the register will be performed on-line. To facilitate the payment for these searches a regulation has been inserted to enable the payment to be made in advance. Once again this is in line with the payment for searches performed on the DAS register and other organisations on-line search facilities.

Consultation

There has been no formal consultation on the reforms in this instrument. These changes are predominately as a result of modernisation of the AiB IT systems and are generally welcome. These Regulations will have to be changed again as part of the reforms contained within The Bankruptcy and Diligence etc (Scotland) Act 2007 (“2007 Act”) when new functions to be carried out by the Accountant in Bankruptcy are introduced. These Regulations will be reviewed over the coming months with the prospect of further amendments at the end of the year. We will be consulting and reviewing the impact of these changes before we propose any new amendments.

There has, however, been extensive engagement with the key stakeholders on the reforms in the 2007 Act, including Money Advice Scotland, Citizens Advice Scotland, and the Institute of Chartered Accountants of Scotland. This has included meetings, seminars, surveys and conferences.

The Scottish Executive has also set up a programme board to help oversee implementation of the 2007 Act.

Financial Effect

These fees are levied to recover part of the administration costs incurred by AiB. They are substituted by the Public Purse as part of the overall AiB budget from Justice Department.

The main additional costs that necessarily follow from this instrument are the IT development costs of the on-line register, however there will be a reciprocal saving in the AiB administrative costs for the manual searches. The development costs are part of an overall modernisation of the AIB IT system of which the register costs are estimated at £45,000.

The on-line facility will be better value for ordinary creditors who currently ask AiB to search the register on their behalf as they will be charged by the day (or annually if they prefer) and have unlimited access, rather than charged per search as present. For those people who do not have access to the internet there will be no change of the cost to them.

There has been an additional cost to the AiB as a result of the changes to the recording and auditing of consignations, which is being developed as part of the modernisation of the AiB finance systems (approximately £100,000 for the whole finance development costs). Although the additional funds will be ingathered by AiB as a result of the additional consignment fee, monies held on behalf of creditors will be more readily identifiable and auditable. As a result of this change, creditors who apply to have these consignations repaid, which can be up to seven years after the monies were deposited with AiB, will get their monies much quicker.

To enable payments to be made in advance and on-line, there is an additional up front and on-going software and banking cost to AiB, which is incorporated within the register development costs. There will be a saving in the administrative costs for AiB as invoices and cheque banking charges will be reduced.

It is not, however, possible to quantify the effect of all these changes at this time. A Regulatory Impact Assessment has not therefore been prepared.

Accountant in Bankruptcy
6 March 2007